JOHNSON et al. *v.* POWHATAN MINING CO., Inc., et al.

June 10, 1920.

[103 S. E. 703.]

1. Judgment (§ 675 (2)*)—Parties against Whom Cause Was Revived Held Parties to Decree.—Where attorneys who represented appellants' mother also represented appellants, and had personal interview with and were retained by them previous to their mother's death, and accepted the writ of scire facias for them, and consented to a decree to save expense of litigation, held, that appellants, against whom the suit was formally revived, were parties to decree when rendered.

2. Judgment (§ 713 (1)*)—Parties Bound by Adjudication.—Parties to litigation are bound thereby, so far as the decree therein adjudicated their rights.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 278 et seq.]

3. Estoppel (§§ 70 (1), 98 (3)*)—Heirs of Party Suppressing Deed Cannot Repudiate Ancestor's Conduct against Subsequent Alienees.—Where a deed to promoters of a corporation was given to one of them, and, if improperly suppressed, was so suppressed by him, and he was a stockholder, president, active promoter, and manager of corporation, after some years he could not repudiate his conduct, and claim interest against subsequent alienees relying on the record title, and his heirs at law would have no better right than he would, if living.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 206 et seq.]

4. Estoppel (§ 98 (3)*)—Heirs Cannot Claim Benefits from Suppressed Deed, Where Ancestor Has Profited Thereby.—Although equitable estoppel may not apply, because claimants must not only be without knowledge, but without available convenient means of acquiring it, yet where claimants' father withheld a deed to himself and other promoters from record, accepting in lieu thereof a deed to the corporation, his heirs cannot be permitted to assume an inconsistent position and claim under such deed after his receiving benefits as promoter and stockholder.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 206 et seq.]

5. Estoppel (§ 118*)—Grantee and Heirs Estopped to Assert That Deed Which Grantee Refused to Accept Was Suppressed.—Evidence held to show that grantee in deed declined to accept it and caused a new deed from same grantors to be made to a corporation of which he was a promoter and stockholder, so that he

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and his heirs were estopped from claiming that the former deed was suppressed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 206 et seq.]

6. Estoppel (§ 30*)—Purchaser Bound by Deeds Excepting Minerals, Timber, and Water Rights.—Purchasers are bound by deeds under which they derived their title, and which expressly excepted the minerals, timber, and water rights of which they had both actual and constructive notice.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 264 et seq.]

7. Logs and Logging (§ 3 (12)*)—Purchaser with Notice Obtains No Fuller Title Than That of Grantor.—Where one of appellants, with actual and constructive notice from the record that minerals, timber, and water rights had been reserved from grantor, purchased from grantor the merchantable timber thereon, such appellants' rights are subordinate to those of alienees holding chain of title to such timber, mineral and water rights.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 219 et seq.]

8. Logs and Logging (§ 3 (11)*)—One Owning Timber, But Not Fee, Should Remove Timber within Reasonable Time.—Where one owns the fee in land, and another the timber growing thereon, with right to remove, the latter should sever and remove it within a reasonable time, unless the contract clearly indicates an indefinite and perpetual right to allow timber to remain unsevered.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 219 et seq.]

9. Logs and Logging (§ 3 (11)*)—Contract for Sale of Timber Not Construed to Grant Perpetual Right to Remove.—While it is possible to draw a contract for an indefinite perpetual right to one owning the timber, but not the fee, to sever and remove it, the courts will not so construe a contract, unless the parties clearly intended and definitely expressed such intention.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 219 et seq.]

10. Appeal and Error (§§ 1121, 1149*)—Supreme Court of Appeals Will Fix Time for Removal of Timber, with Leave to Apply to Lower Court for Extension.—A decree in regard to removal of timber by the owner, who did not own the fee, should fix some reasonable time for removal, and, where this was not done, the Supreme Court of Appeals will do so, with leave to owner thereof to apply to circuit court for a reasonable extension, if actually necessary.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Appeal from Circuit Court, Culpeper County.

Bill by Anna E. Johnson and others against the Powhatan Mining Company, Incorporated, and others. From a decree dismissing the bill, the plaintiffs appeal. Decree amended, affirmed, and remanded.

St. George R. Fitzhugh and *A. T. Embrey,* both of Fredericksburg, for appellants.

Waite, Perry & Nottingham and *Hiden & Bickers,* all of Culpeper, and *W. W. Butzner,* of Fredericksburg, for appellees.

PARKER *v.* STEPHENSON.

June 10, 1920.

[104 S. E. 39.]

1. **Infants (§ 39*)—In Suit to Sell or Mortgage Lands, No Demurrer Needed to Protect Infant.**—In suit to sell or mortgage lands of an infant, he is considered as objecting on every point, and no demurrer is needed on his part to protect him from defective allegations of the bill; substantial compliance with the statutory procedure being essential to the jurisdiction of the court.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 494.]

2. **Infants (§ 39*)—Bill to Sell or Mortgage Lands Sufficient.**—Bill by his mother to sell or mortgage an infant's lands, not stating that his interest in two houses and lots mentioned was all of his estate, but such being the fair inference, an inference confirmed by the finding of the commissioner to whom the cause was referred, which finding was confirmed without objection, was sufficient.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 489.]

3. **Wills (§ 538*)—Son and Wife Took Fee-Simple Estates in Property Devised.**—Clause of a father's will whereby he declared that, in the event of death of either his son or his wife, his entire estate should go to the survivor, referred to the father's death, on which, both the son and wife surviving, they took fee-simple estates in the property devised to them respectively.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 826.]

4. **Infants (§ 39*)—Paternal Heirs of Child Should Have Been Made Parties to Suit to Sell or Mortgage Lands.**—Under Code 1904, § 2556, where on death of an infant his property would have descended to his paternal heirs, he having received it from his

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.